



INTERIOR BOARD OF INDIAN APPEALS

Estate of Wallace Gene Little, Jr.

40 IBIA 59 (07/20/2004)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

ESTATE OF WALLACE GENE LITTLE, JR. : Order Dismissing Appeal
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: Docket No. IBIA 04-88
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: July 20, 2004

Appellant Michelle Little, pro se, sought review by the Board of Indian Appeals (Board) of the probate proceedings in the Estate of Wallace Gene Little, Jr., 344U018111, a deceased Oglala Sioux Indian (Probate No. IP GP 344 0057). The Board dismisses the appeal as untimely.

On April 26, 2004, the Board received a letter dated April 22, 2004, from Appellant, raising objections to the probate proceedings in the Estate of Wallace Gene Little, Jr. The Board docketed the letter as an appeal. Although the letter did not include copies of the probate order(s) being challenged, the Board separately obtained copies of a December 15, 2003, order denying a petition for rehearing; a May 13, 2003, order denying a petition for rehearing; and an initial March 21, 2003, order determining the decedent's heirs and to distribute the estate. 1/ All three orders were issued by Administrative Law Judge Marcel S. Greenia.

Section 4.320(b) of 43 C.F.R. requires that appeals from a probate decision of an administrative law judge on a petition for rehearing must be filed with the Board within 60 days from the date of the decision. The 60-day time period is jurisdictional. Id. Because this appeal appeared to be untimely, having been filed more than 60 days after the most recent order issued by Judge Greenia, dated December 15, 2003, the Board issued an order for

1/ The Mar. 21, 2003, order found that Appellant is a daughter of the decedent.

Appellant to show, on or before May 28, 2004, why this appeal should not be summarily dismissed as untimely. 2/

In a letter to the Board dated May 26, 2004, Appellant raised a new objection to the probate proceedings, but did not address the untimeliness of her appeal. Appellant's May 26 letter does not indicate that it was served on the interested parties to this appeal, as required by 43 C.F.R. § 4.310(b), although the Board previously advised Appellant of the service requirements. Normally, the Board would require Appellant to serve the other interested parties before it would consider her submission, but in this case, the Board concludes that such a requirement is unnecessary because Appellant's May 26 letter fails to show why this appeal should not be dismissed as untimely. Cf. Alan-Wilson v. Acting Sacramento Area Director, 32 IBIA 92, 93 (1998) (Board declined to require appellant to serve petition for reconsideration when appellant could not prevail in any case).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board dismisses this appeal as untimely. 3/

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Colette J. Winston
Administrative Judge

2/ The Board also noted other problems with the appeal, and ordered Appellant to cure these problems if she sought to demonstrate that the appeal was timely. First, in the letter of appeal it appeared that Appellant had signed for six additional individuals. Each would have to personally sign the notice of appeal in order to be considered appellants. (Appellant and the other six individuals had all been found in the Mar. 21 probate order to be children of the decedent and the same mother.) Second, the letter of appeal did not indicate that it had been served on the administrative law judge and all interested parties, as required by 43 C.F.R. § 4.320(c).

3/ In her May 26, 2004, response to the Board, Appellant refers to pending tribal court proceedings that she contends could establish that an eighth individual was also a child of the decedent and Appellant's mother. The Board expresses no view whether the outcome of those tribal court proceedings would provide any basis, under 43 C.F.R. § 4.242, for reopening the probate case, and in any event, that issue would need to be presented to the administrative law judge for a decision before being subject to review by the Board.